

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

COMMENTS OF AVAYA, INC.

Avaya, Inc. (Avaya) is a participant in the Schools and Libraries Universal Service Support Mechanism ("E-rate") as a service provider (vendor) of Internal Connections. Avaya is filing these comments based on its experiences with the administration of the Universal Service Fund by the Universal Service Administrative Company (USAC), the Schools and Libraries Division (SLD) and the subcontractors who process the various forms and required documents for the E-rate program.

These comments are provided on the proposed Eligible Services List for Funding Year 2006 of the E-rate program. Avaya is pleased that the Eligible Services List seems to be less ambiguous than it was in previous years; it appears that the Federal Communications Commission (FCC) is taking the position of maximum flexibility, by providing the *functionality* that is deemed eligible, rather than looking at specific applications of how equipment is utilized.

We applaud the FCC's efforts and agree that this is the preferred model to use for the Eligible Services List. Our concern, however, is that such flexibility is lost later on in the E-rate process, as applicants move to implement the projects that were designed

based on the principles laid out in the Eligible Services List. As the past has shown, there is often a very long gap between the time the project is designed (sometime prior to the window opening in late fall) until funding decisions (especially when the funding in question is for the Internal Connections category of service). In some instances, that gap has been more than 18 months; on top of that the applicant then has to schedule implementation, which may take an additional 10-12 months. By the time the applicant is ready to install equipment, what is commercially available is almost always a newer generation than what was available at the time of project design (or at the time of the original Form 471 application and accompanying Item 21 Description of Services).

As manufacturers move to keep pace with the rapidly developing technologies, the basic *functionality* of the particular item is not changed; a router is a router is a router. The placement in the project configuration may be slightly different, the cost may have been lowered (sometimes significantly), the ability to keep pace with other developing technologies may be improved, etc. Currently SLD deals with these changes by requiring a *service substitution*. The process, however, is cumbersome, time consuming, and oftentimes frustrating as new reviews take place, most often on a case-by-case basis, with conflicting decisions regarding eligibility. In order to preserve the flexibility embodied in the Eligible Services List, the FCC should consider amending the service substitution process to ensure consistent decisions that preserve the applicant's intended project design and functionality, without increasing the risk of fraud, waste and abuse of the E-rate funds.

This can be accomplished in two ways. One is to allow applicants to include in their Item 21 attachment the phrase "*or functional equivalent*" as a way to cover equipment changes that are due to obsolescence or unavailability of the specific equipment indicated once delivery and installation becomes a reality. SLD could conduct random audits to assure that the replaced equipment meets all the tests of the current service substitution requirements, and the applicants could certify to those at the time of their Form 471 submission (or at a later date, if more appropriate). This would make the substitution of equipment more like the substitution of technologies employed in the Telecommunications Services category of service and allow the applicants to appropriately plan for the likelihood of a very long time delay between project design and ultimate project implementation.

Alternatively, SLD could require equipment lists to be updated at the time of the Form 486 submission, such that any necessary review could be accomplished and the results could be shared with both the applicant and the pertinent service provider through the Form 486 Notification Letter. This would prevent some of the current practice of SLD rejecting substituted equipment through an invoice denial (which unduly penalizes both the applicant and the service provider, because at that time the equipment has already been delivered and installed, and someone must pay for it).

In conclusion, the FCC has updated the Eligible Services List to be more flexible and less ambiguous. It is time that the other procedures involved in this long process (from project design, E-rate applications, E-rate funding decisions, all the way to project implementation with equipment delivery and installation) incorporate the same flexibility

and recognition of the rapidly changing landscape of equipment design and nomenclature. The ultimate goal of the E-rate program is to improve the technology that is available to schools and libraries; considering the changes proposed will help ensure that goal is realized.